IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 617 OF 2005

Smt. Narunissa Yakub Baig & Ors. ...Petitioners

Versus

Smt. Sherbano Yakub Baig & Ors. ...Respondents

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Mr. D.S.Joshi h/f I.R.Kulkarni, counsel for petitioners.
Mr. Rajiv Patil, counsel for Respondents 1 to 5.

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CORAM: B. H. MARLAPALLE, J.
DATED: 1ST APRIL, 2005

P. C.:-

1. Heard the learned counsel for the petitioner. Consequent to the order passed by this Court in writ petition No.10612 of 2004 on 19.1.2005 it appears that the petitioner who was impleaded as defendant No.6 in Civil Misc. Application No. 268 of 2001 filed yet another application (Exh.113) praying for framing of additional issues. The learned judge of the trial court has rejected the said application by his order dated 7.2.2005 and hence, this petition.

2. It appears that the petitioner contends that the applicant No.1 is not a Muslim, therefore, her status is required to be decided by framing a specific issue. In addition, the plea was also raised regarding the jurisdiction of the Court below to entertain the application.

3. The issues have been framed by order dated 5.10.2004 on the basis of the written statement filed at Exh.25, by the learned C.J.J.D Panvel. Section 371 of the Indian Succession Act, 1925 is in two parts. An application for grant of certificate can be filed before the Court within whose jurisdiction the deceased ordinarily resided at the time of his death and the applicants have taken a plea that the deceased Yakub Baig died within the jurisdiction of the Court at Panvel. It appears that by filing the applications from time to time the petitioner is trying to delay the issuance of certificate or the decision in the pending application No.268 of 2001. The trial court has noted that consequent to the order passed by this Court on 19.1.2005 the application was required to be decided on the basis of the written statement filed at Exh.25 and therefore, whatever contentions have been raised in the said written statement will have to be considered by the Court below.

4. The view taken by the trial court is a possible view in rejecting the application for framing the additional issues and no interference is called for under Article 227 of the Constitution. Hence, the petition is rejected summarily.